# State Law Library of Montana

## MONTANA LEGISLATIVE HISTORY

Chapter 26 Session L 1997
Bill House 43 Senate _____

History and final status sheet X
Introduced bill X
Fiscal note X
Third reading bill X
Final version of bill X

House Committee on Judiciary

Hearing date(s)* 1/10, 1/16, 1/20

Executive action (vote) date(s)* 1/20

Comm. Report 1/20

Floor 2nd reading & vote 1/21

Floor 3rd reading & vote 1/22

Senate Committee on Judiciary

Hearing date(s)* 1/29, 1/30

Executive action (vote) date(s)* 1/30

Comm. Report 1/30

Floor 2nd reading & vote 2/11

Floor 3rd reading & vote 2/12

Conference or Free Conference Comm. _____ Yes X No

Hearing date(s)* _____

Executive action (vote) date(s)* _____

* Includes minutes, exhibits, roll call, visitors register, and vote sheet if available.

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____ Report _____

NOTES: Redefine the Offense of Escape

By Request of Department of Corrections

State Law Library of Montana

Compiled by: SC

Date: 6/3/2022

3/19 SIGNED BY GOVERNOR
CHAPTER NUMBER 82
EFFECTIVE DATE: 06/30/97

HB 41 INTRODUCED BY COBB *LC0268 DRAFTER: MACMASTER*

PROVIDE MECHANISMS TO INCREASE THE AWARENESS OF THE CONTENTS, COSTS, AND EFFECTS OF, AND POSSIBLE PROBLEMS WITH, ADMINISTRATIVE RULES

| | | | |
|---|---|---|---|
| 12/16 | INTRODUCED | | |
| 12/20 | FISCAL NOTE REQUESTED | | |
| 1/06 | FIRST READING | | |
| 1/06 | REFERRED TO JUDICIARY | | |
| 1/09 | FISCAL NOTE RECEIVED | | |
| 1/13 | FISCAL NOTE PRINTED | | |
| 1/16 | HEARING | | |
| 1/20 | COMMITTEE REPORT—BILL PASSED | | |
| 1/21 | 2ND READING PASSED | 98 | 1 |
| 1/22 | 3RD READING PASSED | 99 | 0 |
| | TRANSMITTED TO SENATE | | |
| 1/23 | FIRST READING | | |
| 1/23 | REFERRED TO STATE ADMINISTRATION | | |
| 2/07 | HEARING | | |
| 2/12 | COMMITTEE REPORT—BILL CONCURRED AS AMENDED | | |
| 3/04 | 2ND READING CONCUR MOTION FAILED | 15 | 32 |

HB 42 INTRODUCED BY COBB *LC0276 DRAFTER: MACMASTER*

REQUIRE AN AGENCY PRESENTED WITH A PETITION FOR RULEMAKING TO ISSUE ITS DECISION IN WRITING, BASED ON THE RECORD

| | | | |
|---|---|---|---|
| 12/16 | INTRODUCED | | |
| 1/06 | FIRST READING | | |
| 1/06 | REFERRED TO JUDICIARY | | |
| 1/16 | HEARING | | |
| 1/23 | COMMITTEE REPORT—BILL PASSED AS AMENDED | | |
| 1/25 | 2ND READING PASSED AS AMENDED | 97 | 0 |
| 1/28 | 3RD READING PASSED | 99 | 1 |
| | TRANSMITTED TO SENATE | | |
| 1/29 | FIRST READING | | |
| 1/29 | REFERRED TO STATE ADMINISTRATION | | |
| 3/05 | HEARING | | |
| 3/07 | COMMITTEE REPORT—BILL CONCURRED | | |
| 3/12 | 2ND READING CONCURRED | 50 | 0 |
| 3/13 | 3RD READING CONCURRED | 50 | 0 |
| | RETURNED TO HOUSE | | |
| 3/15 | SIGNED BY SPEAKER | | |
| 3/15 | SIGNED BY PRESIDENT | | |
| 3/17 | TRANSMITTED TO GOVERNOR | | |
| 3/20 | SIGNED BY GOVERNOR<br>CHAPTER NUMBER 110<br>EFFECTIVE DATE: 10/01/97 | | |

HB 43 INTRODUCED BY BANKHEAD, ET AL. *LC0349 DRAFTER: MACMASTER*

REDEFINE THE OFFENSE OF ESCAPE

BY REQUEST OF DEPARTMENT OF CORRECTIONS

| | | | |
|---|---|---|---|
| 12/16 | INTRODUCED | | |
| 12/20 | FISCAL NOTE REQUESTED | | |
| 1/06 | FIRST READING | | |

| | | | |
|---|---|---|---|
| 1/06 | REFERRED TO JUDICIARY | | |
| 1/07 | FISCAL NOTE RECEIVED | | |
| 1/08 | FISCAL NOTE PRINTED | | |
| 1/10 | HEARING | | |
| 1/20 | COMMITTEE REPORT—BILL PASSED | | |
| 1/21 | 2ND READING PASSED | 99 | 0 |
| 1/22 | 3RD READING PASSED | 99 | 0 |
| | TRANSMITTED TO SENATE | | |
| 1/23 | FIRST READING | | |
| 1/23 | REFERRED TO JUDICIARY | | |
| 1/29 | HEARING | | |
| 1/30 | COMMITTEE REPORT—BILL CONCURRED | | |
| 2/11 | 2ND READING CONCURRED | 49 | 1 |
| 2/12 | 3RD READING CONCURRED | 50 | 0 |
| | RETURNED TO HOUSE | | |
| 2/14 | SIGNED BY SPEAKER | | |
| 2/15 | SIGNED BY PRESIDENT | | |
| 2/18 | TRANSMITTED TO GOVERNOR | | |
| 2/21 | SIGNED BY GOVERNOR | | |
| | CHAPTER NUMBER 26 | | |
| | EFFECTIVE DATE: 02/21/97 | | |

HB 44 INTRODUCED BY DEVANEY *LC0350 DRAFTER: MACMASTER*

LIMIT THE FINANCIAL TRANSACTIONS OF CORRECTIONAL FACILITY INMATES

BY REQUEST OF DEPARTMENT OF CORRECTIONS

| | | | |
|---|---|---|---|
| 12/16 | INTRODUCED | | |
| 12/20 | FISCAL NOTE REQUESTED | | |
| 1/06 | FIRST READING | | |
| 1/06 | REFERRED TO JUDICIARY | | |
| 1/10 | HEARING | | |
| 1/10 | FISCAL NOTE RECEIVED | | |
| 1/11 | FISCAL NOTE PRINTED | | |
| 1/16 | TABLED IN COMMITTEE | | |
| 2/05 | COMMITTEE REPORT—BILL PASSED AS AMENDED | | |
| 2/07 | 2ND READING PASSED | 86 | 11 |
| 2/08 | 3RD READING PASSED | 91 | 8 |
| | TRANSMITTED TO SENATE | | |
| 2/11 | FIRST READING | | |
| 2/11 | REFERRED TO JUDICIARY | | |
| 3/07 | REVISED FISCAL NOTE REQUESTED | | |
| 3/11 | HEARING | | |
| 3/15 | COMMITTEE REPORT—BILL CONCURRED AS AMENDED | | |
| 3/19 | 2ND READING CONCURRED | 28 | 21 |
| 3/20 | 3RD READING CONCURRED | 39 | 11 |
| | RETURNED TO HOUSE WITH AMENDMENTS | | |
| 3/22 | REVISED FISCAL NOTE RECEIVED | | |
| 3/22 | REVISED FISCAL NOTE PRINTED | | |
| 3/26 | REVISED FISCAL NOTE REQUESTED | | |
| 3/27 | REVISED FISCAL NOTE RECEIVED | | |
| 3/27 | REVISED FISCAL NOTE PRINTED | | |
| 4/08 | 2ND READING AMENDMENTS CONCURRED | 99 | 0 |
| 4/09 | 3RD READING CONCURRED AS AMENDED | 87 | 13 |
| 4/10 | REVISED FISCAL NOTE PRINTED | | |
| 4/12 | SIGNED BY SPEAKER | | |
| 4/14 | SIGNED BY PRESIDENT | | |
| 4/16 | TRANSMITTED TO GOVERNOR | | |

HOUSE BILL NO. 43

INTRODUCED BY BANKHEAD

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT REDEFINING THE OFFENSE OF ESCAPE; ALLOWING A GOVERNMENTAL ENTITY TO RECOVER FROM AN ESCAPEE ITS COSTS REGARDING THE ESCAPE, THE INVESTIGATION OF THE ESCAPE, AND THE APPREHENSION OF THE ESCAPEE; AMENDING SECTIONS 45-7-306 AND 46-18-243, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 45-7-306, MCA, is amended to read:

**"45-7-306. Escape.** (1)(a) "Official detention" means ~~imprisonment which resulted from~~ placement of a person in the legal custody of a municipality, a county, or the state as a result of:

(i) a conviction for an offense~~, confinement for an offense, confinement of a person charged with~~ or of having been charged with an offense~~, detention~~;

(ii) the actual or constructive restraint or custody of a person by a peace officer pursuant to arrest, transport, or court order;

(iii) detention for extradition or deportation~~;~~;

(iv) placement in a community corrections facility or program~~;~~;

(v) supervision while under a supervised release program~~;~~;

(vi) participation in a county jail work program under 7-32-2225 through 7-32-2227~~;~~; or

(vii) any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society.

(b) ~~"Official detention"~~ Official detention does not include supervision of a person on probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(2) A person subject to official detention commits the offense of escape if ~~he~~ the person knowingly or purposely ~~removes himself from~~ eludes official detention or fails to return to official detention following

temporary leave granted for a specific purpose or limited time. A person also commits the offense of escape if ~~he~~ the person is participating in a county jail work program under 7-32-2225 through 7-32-2227 and ~~he~~ knowingly or purposely fails to appear for work at a time and place scheduled for participation in the program.

(3) A person convicted of the offense of escape shall be:

(a) imprisoned in the state prison for a term not to exceed 20 years if ~~he~~ the person escapes ~~from or while in transit to or from a state prison, county jail, city jail, community corrections facility or program, or supervised release program~~ by the use or threat of force, physical violence, a weapon, or a simulated weapon;

(b) imprisoned in the state prison for a term not to exceed 10 years if ~~he:~~

~~(i) has~~ the person escapes after having been charged with or convicted of a felony ~~and escapes from or while in transit to or from a state prison, county jail, city jail, halfway house, life skills center, community corrections facility or program, or supervised release program; or~~

~~(ii) escapes from or while in transit to or from another official detention by the use or threat of force, physical violence, weapon, or simulated weapon~~; or

(c) fined an amount not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both, if ~~he commits escape, including escape while in transit to or from official detention,~~ the person escapes under circumstances other than those described in subsections (3)(a) and (3)(b)."

**Section 2.** Section 46-18-243, MCA, is amended to read:

"**46-18-243. Definitions.** For purposes of 46-18-241 through 46-18-249, the following definitions apply:

(1) "Pecuniary loss" means:

(a) all special damages, but not general damages, substantiated by evidence in the record, that a person could recover against the offender in a civil action arising out of the facts or events constituting the offender's criminal activities, including without limitation the money equivalent of loss resulting from property taken, destroyed, broken, or otherwise harmed and out-of-pocket losses, such as medical expenses, loss of income, expenses reasonably incurred in obtaining ordinary and necessary services that the victim would have performed if not injured, expenses reasonably incurred in attending court proceedings related to the commission of the offense, and reasonable expenses related to funeral and burial or

crematory services; and

(b) reasonable out-of-pocket expenses incurred by the victim in filing charges or in cooperating in the investigation and prosecution of the offense.

(2)(a) "Victim" means:

(i) a person who suffers loss of property, bodily injury, or death as a result of:

(A) the commission of an offense;

(B) the good faith effort to prevent the commission of an offense; or

(C) the good faith effort to apprehend a person reasonably suspected of committing an offense;

(ii) the estate of a deceased or incapacitated victim or a member of the immediate family of a homicide victim;

(iii) a governmental entity that suffers loss of property as a result of the commission of an offense in this state or that incurs costs or losses during the commission or investigation of an escape, as defined in 45-7-306, or during the apprehension or attempted apprehension of the escapee; or

(iv) an insurer or surety with a right of subrogation to the extent it has reimbursed the victim of the offense for pecuniary loss.

(b) Victim does not include a person who is accountable for the crime or accountable for a crime arising from the same transaction."

NEW SECTION. **Section 3. Applicability.** [This act] applies to escapes occurring after [the effective date of this act].

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0043, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
A bill for an act redefining the offense of escape; allowing a governmental entity to recover from an escapee its costs regarding the escape, and providing an immediate effective and applicability date.

ASSUMPTIONS:
1. This bill is intended to address a Supreme Court opinion which had reversed several felony escape convictions. This bill would place felony escape on the same footing as it was prior to the Supreme Court opinions.
2. This bill would entitle the Department of Corrections (DOC) to recoup costs incurred apprehending escapees.

FISCAL IMPACT:
DOC does not anticipate that the bill will impact the number of persons under department custody nor the length of their sentences as the penalty remains the same.

DOC is not able to estimate the apprehension costs that might be recouped as the costs incurred by state or local government and the offender's ability to repay those costs vary.

Dave Lewis 1-6-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Paul Bankhead 1-7-97
PAUL BANKHEAD, PRIMARY SPONSOR DATE

Fiscal Note for HB0043, as introduced

HB 43

# MINUTES

## MONTANA HOUSE OF REPRESENTATIVES
## 55th LEGISLATURE - REGULAR SESSION

## COMMITTEE ON JUDICIARY

**Call to Order:** By CHAIRMAN BOB CLARK, on January 10, 1997, at 8:00 AM, in Room 312-1

### ROLL CALL

**Members Present:**

Rep. Robert C. Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

**Staff Present:** John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 29, HB 43, HB 44, HB 65; POSTED 1/7/97

### HEARING ON HB 43

Sponsor: **REP. PAUL BANKHEAD**

*{Tape: 1; Side: A; Approx. Time Count: 3.1 - 9.1; Comments: Opening and statement of intent.}*

Proponents:

DIANA LIEBINGER-KOCH, Department of Corrections - EXHIBITS 1 & 2
*{Tape: 1; Side: A; Approx. Time Count: 9,2 - 15.6}*

CHRIS MILLER, POWELL COUNTY ATTORNEY
*{Tape: 1; Side: A; Approx. Time Count: 15.7 - 20.5}*

JOHN CONNOR, DEPARTMENT OF JUSTICE - EXHIBIT 3
*{Tape: 1; Side: A; Approx. Time Count: 20.6 - 21.4}*

DENNIS PAXINOS, MONTANA COUNTY ATTORNEY ASSOCIATION
*{Tape: 1; Side: A; Approx. Time Count: 21.5 - 22.6}*

Opponents: NONE

Questions From Committee Members and Responses:
*{Tape: 1; Side: A; Approx. Time Count: 22.7 - Tape 1, Side B, 1.4; Comments: Members of the committee asked questions of the witnesses.}*

Closing by Sponsor: REPRESENTATIVE BANKHEAD
*{Tape: 1; Side: B; Approx. Time Count: 1.4 - 3.6}*

## HEARING ON HB 44

Sponsor: REP. CHARLES DEVANEY
*{Tape: 1; Side: B; Approx. Time Count: 4.0 - 10.0; Comments: Sponsor opened the hearing.}*

Proponents:

LOIS ADAMS, DEPARTMENT OF CORRECTIONS
*{Tape: 1; Side: B; Approx. Time Count: 10.0 - 11.5.}*

Opponents: NONE

Questions From Committee Members and Responses:
*{Tape: 1; Side: A; Approx. Time Count: 11.9 - Tape 2; Side A; 10.7; Comments: Members of the committee questioned witnesses.}*

Closing by Sponsor: REPRESENTATIVE DEVANEY
*{Tape: 2; Side: A; Approx. Time Count: 13.3 - 15.6}*

## HEARING ON HB 65

Sponsor: REP. WILLIAM "RED" MENAHAN
*{Tape: 2; Side: A; Approx. Time Count: 15.9 - 17.6; Comments: Sponsor opened the hearing.}*

Proponents:

VICKIE FRAZIER, LEWIS & CLARK COUNTY ATTORNEY
*{Tape: 2; Side: A; Approx. Time Count: 18.2 - 23.7}*

EXHIBIT 1
DATE 1/10/97
HB 43



exceed 6 months, or both, if he commits escape, including escape while in transit to or from official detention, under circumstances other than (a) and (b) of this subsection.

Here, the evidence precludes application of either § 45–7–306(3)(a) or (b)(ii), MCA (1993), since the use or threat of force, physical violence, or weapons, real or simulated, was not involved in the three inmates' escape. Since the District Court sentenced each defendant for felony escape, necessarily the only other subsection of § 45–7–306(3), MCA (1993), available was (b)(i). Sentencing under that provision, however, requires that the person convicted escape "from or while in transit to or from" the various institutions and facilities listed.

The facts established at trial clearly indicate that Lafley's, Worden's and Edwards' escape occurred while they were on daily work assignment at the Deer Lodge golf course. At the time of the crime, they were not at any one of the institutions or facilities listed in the statute, nor were they "in transit" to or from one of those institutions or facilities.

Notwithstanding the clear and unambiguous language of the statute, the State nevertheless argues that we should not apply the statute literally, but should liberally construe the phrase "while in transit to or from" to describe "both the actual conveyance of inmates to and from the state prison at the beginning and end of each work day and the degree of custody to which they are subject while at work." To do otherwise, according to the State, will defy common sense and necessitate the legislature once again amending the statute as it did in response to our prior narrow and literal interpretations of the statutory language at issue in *State v. Whiteshield* (1980), 185 Mont. 208, 605 P.2d 189 (rejecting the argument that escape from a furlough was the same as escape from the state prison); *State v. Savaria* (1990), 245 Mont. 224, 800 P.2d 696 (rejecting the argument that escape from the "county jail" encompassed defendant's escape from the courthouse following his appearance at a sentencing proceeding). See also, *State v. Kyle* (1980), 189 Mont. 38, 614 P.2d 1059, which prompted the legislature to amend the statute to codify our decision and include supervised release programs within the felony escape statute. We decline the State's invitation to insert into the statute that which has been omitted by the legislature. Section 1–2–101, MCA.

In the first place, the language which the legislature chose in defining felony escape under § 45–7–306(3)(b)(i), MCA (1993), is clear and unambiguous. We are simply not going to torture the phrase "in transit to or from" as the State suggests we should. Lafley, Worden and Edwards were not "in transit" to or from any state facility or institution when they escaped. They were at the Deer Lodge golf course.

Secondly, we do not assume, as the State apparently does, that the legislature would, in any event, consider an unrestrained inmate's escape from a civilian-supervised work assignment outside the walls of the institution to pose the same sort of serious risk of harm and violence that is inherent in a prisoner's escape from confinement and supervision by guards whose duty is to prevent escapes. *See Whiteshield*, 605 P.2d at 190–91; *Kyle*, 614 P.2d at 1060. Certainly, if the legislature deems the sorts of escapes at issue here to pose a serious risk of harm, it can amend the statute to accommodate that concern.

Accordingly, we hold that the District Court improperly sentenced Lafley, Worden and Edwards pursuant to the felony escape provisions of § 45–7–306(3)(b)(i), MCA (1993), under the facts of this case. We remand for resentencing under the misdemeanor escape provisions of § 45–7–306(3)(c), MCA (1993).

Affirmed in part; reversed in part; and remanded for further proceedings consistent with this opinion.

TURNAGE, C.J., and TRIEWEILER, GRAY, HUNT, LEAPHART and ERDMANN, JJ., concur.

WEST KEY NUMBER SYSTEM

DEPARTMENT OF CORRECTIONS

EXHIBIT 2
DATE 1/10/97
HB 43

MARC RACICOT, GOVERNOR

1539 11TH AVENUE

STATE OF MONTANA

(406) 444-3930
FAX: (406) 444-4920

PO BOX 201301
HELENA, MONTANA 59620-1301

**BEFORE THE HOUSE JUDICIARY COMMITTEE; TESTIMONY CONCERNING HOUSE BILL 43.**

**WHY STATUTORY CHANGES ARE NECESSARY:**

Two 1996 Montana Supreme Court cases vividly illustrate the need for changes to the escape statute. State v. Nelson, 53 St. Rep. 50, 910 P.2d 247 (1996), was the first case. See attached copy of the Pacific Reporter page number 253 of this case. Nelson and two other inmates were on "trustee" status at MSP and were performing work on the Deer Lodge golf course. A civilian golf course employee was supposed to be supervising them. The inmates eluded their supervisor, however, long enough to become intoxicated and leave in the golf course truck to drive to Helena for more alcohol. The State charged them with felony escape when law enforcement apprehended them. The Supreme Court decided they were only guilty of misdemeanor escape.

The Supreme Court speaks to the Montana Legislature on page 253 of the Court's opinion. The Court said, "We decline ...to insert into the statute that which has been omitted by the legislature." The current statute names each specific place from which an inmate can commit felony escape. The current statute does not list the Deer Lodge golf course or any other place outside a facility. With the changes to this statute which Representative Bankhead's bill proposes, the legislature does not need to try and imagine every possible scenario of escape and



"AN EQUAL OPPORTUNITY EMPLOYER"

include every conceivable place in the statute.

The Supreme Court also states on page 253 it will not assume the legislature considers an escape from a "civilian supervised work assignment outside the walls of the institution" as serious and dangerous as an escape from an institution. The Court reasons an escape from an institution poses a, "serious risk of harm and violence." The Court states later, "Certainly, if the legislature deems the sorts of escapes at issue here to pose a serious risk of harm, it can amend the statute to accommodate that concern."

The Department of Corrections urges the legislature to adopt the categories of risk inherent in escapes as this bill proposes. This bill categorizes the risk posed by the **individual escapee,** rather than the situation from which the escape takes place. This bill presumes someone who is charged with or convicted of a felony is necessarily more dangerous and poses more risk than someone who is merely charged with or convicted of a misdemeanor. This bill also assumes someone who committed a felony and whom a district court judge deemed dangerous enough to sentence to prison or the Department of Corrections poses a danger to society if allowed to roam the streets and highways unsupervised before the inmate's incarceration, parole, and probation is finished.

After the Supreme Court released the Nelson opinion on January 30, 1996, community corrections officials were very concerned about inmates whom the Department was supervising in the community at pre-release centers and on intensive supervision. The Department of Corrections sends inmates who escape immediately back to prison when law enforcement captures them. The escapee then spends time in maximum security and forfeits all his/her accumulated good time. That alone, though, is not significant enough to deter inmates from

trying to escape. The courts usually sentence defendants found guilty of felony escape to another two years of incarceration which the inmate must serve consecutive to his/her original sentence. Most inmates also fear another felony conviction, and even more time added for a felony escape.

The next Supreme Court opinion about escape also depicted why the statute needs to change. The Supreme Court decided State v. Roberts, 53 St. Rep. 181, 912 P.2d 812 (1996), on March 12, 1996. Roberts was an inmate whom the parole board was going to parole. Before he was paroled, however, the prison granted him a 10 day furlough to look for housing and employment. Roberts did not return to the prison at the end of the 10 days. The Court said Roberts was not "subject to official detention" at all. The Court ordered the District Court to dismiss the escape charge against Roberts; he was not guilty of any escape, misdemeanor or felony.

If the statute stays the same, prison officials will have to study the statute before they dare take an inmate anywhere outside the prison walls to determine if the place where they are taking the inmate is included in the escape statute. Corrections officials also will have to change the furlough policy.

## MAJOR PROPOSED CHANGES IN THE STATUTE

CURRENT STATUTORY LANGUAGE: 45-7-306. Escape. (1) "Official detention" means **imprisonment** which resulted from a conviction for an offense, **confinement** for an offense, **confinement** of a person charged with an offense, detention by a peace officer pursuant to arrest,

IS CHANGED TO:

"Official detention" means **placement of a person in the legal custody of** a municipality, a county, or the state as a result of:

(I) a conviction for an offense, or of having been charged with an offense;

(ii) the actual or constructive restraint or custody of a person by a peace officer pursuant to arrest, transport, or court order;

*This Section changes the definition of "official detention" from a person who has been confined in various facilities to a definition which includes every person who is in the legal custody of a city, county, or state.*

THIS PORTION REMAINS THE SAME:

detention for extradition or deportation, placement in a community corrections facility or program, supervision while under a supervised release program, participation in a county jail work program under 7-32-2225 through 7-32-2227, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society.

OR ALMOST THE SAME

"Official detention" does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(2) A person subject to official detention commits the offense of escape if he knowingly or purposely removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited time. A person also commits the offense of escape if he is participating in a county jail work program under 7-32-2225 through 7-32-2227 and he knowingly or purposely fails to appear for work at a time and place scheduled for participation in the program.

**MORE MAJOR CHANGES:**

CURRENT STATUTORY LANGUAGE:

(3) A person convicted of the offense of escape shall be:

(a) imprisoned in the state prison for a term not to exceed 20 years if he escapes **from or while in transit to or from a state prison, county jail, city jail, community corrections**

**facility or program, or supervised release program** by the use or threat of force, physical violence, weapon, or simulated weapon;

IS CHANGED TO:

(a) imprisoned in the state prison for a term not to exceed 20 years if the person escapes by the use or threat of force, physical violence, a weapon, or a simulated weapon.

*The initial changes eliminated the necessity of naming every conceivable place from which an inmate could escape and put the emphasis on the means of escape.*

CURRENT STATUTORY LANGUAGE:

(b) imprisoned in the state prison for a term not to exceed 10 years if he:

(i) has been charged with or convicted of a felony and escapes from or while in transit to or from a state prison, county jail, city jail, halfway house, life skills center, community corrections facility or program, or supervised release program; or

(ii) escapes from or while in transit to or from another official detention by the use or threat of force, physical violence, weapon, or simulated weapon; or

IS CHANGED TO:

(b) imprisoned in the state prison for a term not to exceed 10 years if the person escapes after having been charged with or convicted of a felony; or

*Again, here the statute need not name all places and situations from which an inmate could escape.*

SUBSECTION (C) REMAINS MOSTLY THE SAME.

(c) fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both, if he commits escape, including escape while in transit to or from official detention, under circumstances other than (a) and (b) of this subsection.

With the new Section of this bill the Department seeks to hold offenders accountable by

trying to recoup the cost of an escape investigation and apprehension of an escapee. This makes sense from an accountability point of view and from a fiscal point of view.

The Department of Corrections requests this Judiciary Committee pass House Bill 43 so corrections officials have an effective tool to help protect society and hold offenders accountable.

STATE OF MONTANA
DEPARTMENT OF JUSTICE
COUNTY PROSECUTOR SERVICES BUREAU

EXHIBIT 3
DATE 1/10/97
HB 43

Joseph P. Mazurek
Attorney General

Scott Hart Bldg., 1st Floor
303 N Roberts
PO Box 201439
Helena, MT 59620-1439

# HOUSE BILL 43

In 1991, the escape statute, Mont. Code Ann. § 45-7-306, was amended by adding the language "while in transit to or from" any of the facilities listed. This amendment was enacted to correct a problem in the statue in response to a Montana Supreme Court decision holding that a person who escaped while being transported to court from a county jail was not guilty of felony escape. However, the 1991 language did not entirely cure the problem, apparently, because in the 1996 case of State v. Nelson, Worden and Lafley, the Montana Supreme Court held that a state prison inmate who escapes while on work assignment outside the prison walls is not guilty of a felony.

The 1997 proposed amendments are intended to clarify finally that any person who has been charged with or convicted of a felony who is under lawful custody of the state, county, or city (other than a probationer or parolee) is guilty of felony escape if he escapes from or fails to return to that custody following temporary leave granted for a specific purpose. The bill eliminates the laundry list of facilities from which an escape constitutes a felony and focuses instead on the fact of custody. This will also remedy another Montana Supreme Court opinion, State v. Roberts, in which the Court held that an escape while on a 10-day leave from MSP to find employment for future parole status did not constitute a felony.

Respectfully Submitted,

John Connor
Assistant Attorney General
Department of Justice .
303 North Roberts
Helena, MT 59620
(406) 444-5791

Exhibit # 3 State v Roberts
State v Nelson, Worden, Lafley

The full exhibit is available from:
MT Historical Society Archives
225 North Roberts
P.O. Box 201201
Helena, MT. 59602-1201
Phone: (406) 444-4775

# HOUSE OF REPRESENTATIVES

## JUDICIARY COMMITTEE

ROLL CALL DATE 1/10/97

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| | | | |
| REP. BOB CLARK, CHAIRMAN | ✓ | | |
| REP. DANIEL MC GEE, VICE CHAIR | ✓ | | |
| REP. DIANA WYATT, VICE CHAIR | ✓ | | |
| REP. CHRIS AHNER 9:15 | ✓ | | |
| REP. SHIELL ANDERSON | ✓ | | |
| REP. ELLEN BERGMAN | ✓ | | |
| REP. WILLIAM BOHARSKI | ✓ | | |
| REP. AUBYN CURTISS | ✓ | | |
| REP. JON ELLINGSON | ✓ | | |
| REP. DUANE GRIMES | ✓ | | |
| REP. H.S. "SONNY" HANSON | ✓ | | |
| REP. JOAN HURDLE | ✓ | | |
| REP. DEB KOTTEL | ✓ | | |
| REP. LINDA MC CULLOCH | ✓ | | |
| REP. BRAD MOLNAR | ✓ | | |
| REP. GERALD PEASE | ✓ | | |
| REP. DIANE SANDS | ✓ | | |
| REP. LIZ SMITH | ✓ | | |
| REP. LOREN SOFT | ✓ | | |
| REP. BILL TASH | ✓ | | |
| | | | |

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 1/10/93

BILL NO. HB43 SPONSOR(S) Rep. Bankhead

PLEASE PRINT PLEASE PRINT PLEASE PRINT

| NAME AND ADDRESS | REPRESENTING | Support | Oppose |
|---|---|---|---|
| DEPT. of CORRECTIONS DIANA LEIBINGER-KOCH | DEP. of CORRECTIONS | ✓ | |
| John Connor | Dept of Justice | ✓ | |
| Michael J. Mann | MT Dept of Corr. | X | |
| Chris Miller | Powell Co. Atty. | ✓ | |
| Jim Keys | Myself - a concerned citizen | ✓ | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

[redacted] WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993
wp:vissbcom.man
CS-14

# MINUTES

## MONTANA HOUSE OF REPRESENTATIVES
## 55th LEGISLATURE - REGULAR SESSION

## COMMITTEE ON JUDICIARY

**Call to Order:** By CHAIRMAN BOB CLARK, on January 16, 1997, at 8:10 AM, in Room 312-1.

### ROLL CALL

**Members Present:**

Rep. Robert C. Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

**Staff Present:** John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

**Committee Business Summary:**

| | | |
|---|---|---|
| Hearing(s) & Date(s) Posted: | | HB 40, HB 41, HB 42, POSTED 1/8/97 |
| Executive Action: | | HB 44 - TABLED |
| | | HB 38 - DO PASS AS AMENDED |

### HEARING ON HB 40

**Sponsor:** **REP. JOHN COBB**

**Opening Statement by Sponsor:** **EXHIBITS 1, 2, 3**
*{Tape: 1; Side: A; Approx. Time Count: 0.7 - 4.6}*

Motion: **REP. BRAD MOLNAR moved HB 38 DO PASS AS AMENDED.**
*{Tape: 3; Side: B; Approx. Time Count: 25.9}*

Discussion:
*{Tape: 3; Side: B; Approx. Time Count: 26.4}*

Motion: **REP. MOLNAR moved to Table HB 38.**
*{Tape: 3; Side: B; Approx. Time Count: 27.8 - Tape 4; Side A; 2.8; Comments: Table motion was not accepted pending further discussion and was later entertained by the Chairman.}*

Vote: The motion to Table failed by voice vote.
*{Tape: 4; Side: A; Approx. Time Count: 2.9; Comments: Further discussion followed.}*

Motion/Vote: **REP. MOLNAR moved HB 38 DO PASS AS AMENDED.** The motion carried 13 - 6, REPRESENTATIVES WYATT, KOTTEL, BERGMAN, AHNER, HURDLE and SMITH voting no.
*{Tape: 4; Side: A; Approx. Time Count: 4.2 - 4.9}*

## EXECUTIVE ACTION ON HB 43

Motion: **REPRESENTATIVE BILL BOHARSKI MOVED HB 43 DO PASS.**
*{Tape: 4; Side: A; Approx. Time Count: 5.0 - 7.5}*

Discussion: Executive Action on HB 43 was postponed.
*{Tape: 4; Side: A; Approx. Time Count: 7.6 - 7.9}*

## EXECUTIVE ACTION ON HB 44

Motion: **REP. ANDERSON moved HB 44 DO PASS, REP. HANSON seconded.**
*{Tape: 4; Side: A; Approx. Time Count: 8.1 - 8.5}*

Motion/Vote: **REP. ANDERSON moved to amend HB 44** to insert "transact without permission of the department" on page 1, line 1. The motion carried 16 - 3, REPS. ELLINGSON, HURDLE and WYATT voting no.
*{Tape: 4; Side: A; Approx. Time Count: 8.6 - 10.1}*

Motion/Vote: **REP. ANDERSON moved to amend HB 44 with a conceptual amendment regarding confidentiality.** The motion carried by unanimous vote.
*{Tape: 4; Side: A; Approx. Time Count: 15.2 - 15.5}*

Discussion: **REP. CLARK**
*{Tape: 4; Side: A; Approx. Time Count: 15.6 - 16.0; Comments: clarification of portions of the bill.}*

Motion: **REP. SANDS moved to amend HB 44 to delete Section 1.**
*{Tape: 4; Side: A; Approx. Time Count: 16.1 - 17.5}*

Discussion:
*{Tape: 4; Side: A; Approx. Time Count: 17.6 - Tape 4; Side B: 8.5}*

# HOUSE OF REPRESENTATIVES

8:10 am

## JUDICIARY COMMITTEE

ROLL CALL DATE 4/16/97

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| | | | |
| REP. BOB CLARK, CHAIRMAN | ✓ | | |
| REP. DANIEL MC GEE, VICE CHAIR | ✓ | | |
| REP. DIANA WYATT, VICE CHAIR | ✓ | | |
| REP. CHRIS AHNER | ✓ | | |
| REP. SHIELL ANDERSON | ✓ | | |
| REP. ELLEN BERGMAN | ✓ | | |
| REP. WILLIAM BOHARSKI | ✓ | | |
| REP. AUBYN CURTISS | ✓ | | |
| REP. JON ELLINGSON | ✓ | | |
| REP. DUANE GRIMES | ✓ | | |
| REP. H.S. "SONNY" HANSON | ✓ | | |
| REP. JOAN HURDLE | ✓ | | |
| REP. DEB KOTTEL | ✓ | | |
| REP. LINDA MC CULLOCH | ✓ | | |
| REP. BRAD MOLNAR | ✓ | | |
| REP. GERALD PEASE | ✓ | | |
| REP. DIANE SANDS | ✓ | | |
| REP. LIZ SMITH | ✓ | | |
| REP. LOREN SOFT | ✓ | | |
| REP. BILL TASH | ✓ | | |
| | | | |

# MINUTES

## MONTANA HOUSE OF REPRESENTATIVES
## 55th LEGISLATURE - REGULAR SESSION

## COMMITTEE ON JUDICIARY

**Call to Order:** By CHAIRMAN BOB CLARK, on January 20, 1997, at 8:00 AM, in Room 312-1.

### ROLL CALL

**Members Present:**

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)

**Members Excused:** Rep. Brad Molnar (R)
Rep. Bill Tash (R)

**Staff Present:** John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 195, HB 218, POSTED 1/15/97
Executive Action:
HB 41 DO PASS
HB 43 DO PASS
HB 135 DO PASS AS AMENDED
HB 137 TABLE
HB 218 DO PASS

### HEARING ON HB 195

Opening Statement by Sponsor: **REP. KARL OHS**
*{Tape: 1; Side: A; Approx. Time Count: 1.5; Comments: REP. OHS presented the bill in the absence of REP. BILL TASH.}*

Discussion:
*{Tape: 1; Side: B; Approx. Time Count: 17.1}*

Vote: The motion carried by unanimous vote.
*{Tape: 1; Side: B; Approx. Time Count: 17.5}*

## EXECUTIVE ACTION ON HB 98

Motion: **REP. SHIELL ANDERSON moved HB 98 DO PASS.**
*{Tape: 1; Side: B; Approx. Time Count: 17.9; Comments: CHAIRMAN CLARK agreed to hold further action for amendments.}*

## EXECUTIVE ACTION ON HB 43

Motion: **REP. DANIEL MC GEE moved HB 43 DO PASS.**
*{Tape: 1; Side: B; Approx. Time Count: 19.9}*

Discussion:
*{Tape: 1; Side: B; Approx. Time Count: 21.4}*

Vote: The motion carried by unanimous vote.

## EXECUTIVE ACTION ON HB 135

Motion: **REP. DIANE SANDS moved HB 135 DO PASS.**
*{Tape: 1; Side: B; Approx. Time Count: 22.2}*

Discussion:
*{Tape: 1; Side: B; Approx. Time Count: 23.2 - end of tape}*

Motion: **REP. DEB KOTTEL moved to amend HB 135.**
*{Tape: 2; Side: A; Approx. Time Count: 0.8}*

Motion: **REP. LIZ SMITH moved a substitute amendment to HB 135.**
*{Tape: 2; Side: A; Approx. Time Count: 1.5}*

Discussion:
*{Tape: 2; Side: A; Approx. Time Count: 5.3}*

Vote: The motion carried to amend HB 135 14 - 4; REPS. SOFT, SANDS, WYATT and SMITH voting no.

Motion/Vote: **REP. BILL BOHARSKI moved HB 135 DO PASS AS AMENDED.** The motion carried by unanimous vote, 18-0.

*{Tape: 2; Side: A; Approx. Time Count: 7.4; Comments: Executive Action on HB 159 was postponed.}*

## EXECUTIVE ACTION ON HB 137

Motion: **REP. DEB KOTTEL moved HB 137 DO PASS.**
*{Tape: 2; Side A; Comments: Executive Action too rapid to note counter.}*

# HOUSE STANDING COMMITTEE REPORT

January 20, 1997



Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 43** (first reading copy -- white) **do pass**.

Signed: Bob Clark

*Bob Clark, Chair*

1120 12:00

Committee Vote:
Yes 18, No 0.

131121SC.Hgd

# HOUSE OF REPRESENTATIVES

## JUDICIARY COMMITTEE

ROLL CALL DATE 1/20/97

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| | | | |
| REP. BOB CLARK, CHAIRMAN | ✓ | | |
| REP. DANIEL MC GEE, VICE CHAIR | ✓ | | |
| REP. DIANA WYATT, VICE CHAIR | ✓ | | |
| REP. CHRIS AHNER | ✓ | | |
| REP. SHIELL ANDERSON | ✓ | | |
| REP. ELLEN BERGMAN | ✓ | | |
| REP. WILLIAM BOHARSKI | ✓ | | |
| REP. AUBYN CURTISS | ✓ | | |
| REP. JON ELLINGSON | ✓ | | |
| REP. DUANE GRIMES | ✓ | | |
| REP. H.S. "SONNY" HANSON | ✓ | | |
| REP. JOAN HURDLE | ✓ | | |
| REP. DEB KOTTEL | ✓ | | |
| REP. LINDA MC CULLOCH | ✓ | | |
| REP. BRAD MOLNAR | | | ✓ |
| REP. GERALD PEASE | ✓ | | |
| REP. DIANE SANDS | ✓ | | |
| REP. LIZ SMITH | ✓ | | |
| REP. LOREN SOFT | ✓ | | |
| REP. BILL TASH | | | ✓ |
| | | | |

APPROVED BY COM
ON JUDICIARY

HOUSE BILL NO. 43

INTRODUCED BY BANKHEAD

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT REDEFINING THE OFFENSE OF ESCAPE; ALLOWING A GOVERNMENTAL ENTITY TO RECOVER FROM AN ESCAPEE ITS COSTS REGARDING THE ESCAPE, THE INVESTIGATION OF THE ESCAPE, AND THE APPREHENSION OF THE ESCAPEE; AMENDING SECTIONS 45-7-306 AND 46-18-243, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 45-7-306, MCA, is amended to read:

**"45-7-306. Escape.** (1)(a) "Official detention" means ~~imprisonment which resulted from~~ placement of a person in the legal custody of a municipality, a county, or the state as a result of:

(i) a conviction for an offense~~, confinement for an offense, confinement of a person charged with~~ or of having been charged with an offense~~, detention~~;

(ii) the actual or constructive restraint or custody of a person by a peace officer pursuant to arrest, transport, or court order;

(iii) detention for extradition or deportation~~;~~;

(iv) placement in a community corrections facility or program~~;~~;

(v) supervision while under a supervised release program~~;~~;

(vi) participation in a county jail work program under 7-32-2225 through 7-32-2227~~;~~; or

(vii) any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society.

(b) ~~"Official detention"~~ Official detention does not include supervision of a person on probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(2) A person subject to official detention commits the offense of escape if ~~he~~ the person knowingly or purposely ~~removes himself from~~ eludes official detention or fails to return to official detention following

temporary leave granted for a specific purpose or limited time. A person also commits the offense of escape if ~~he~~ the person is participating in a county jail work program under 7-32-2225 through 7-32-2227 and ~~he~~ knowingly or purposely fails to appear for work at a time and place scheduled for participation in the program.

(3) A person convicted of the offense of escape shall be:

(a) imprisoned in the state prison for a term not to exceed 20 years if ~~he~~ the person escapes ~~from or while in transit to or from a state prison, county jail, city jail, community corrections facility or program, or supervised release program~~ by the use or threat of force, physical violence, a weapon, or a simulated weapon;

(b) imprisoned in the state prison for a term not to exceed 10 years if ~~he:~~

~~(i) has~~ the person escapes after having been charged with or convicted of a felony ~~and escapes from or while in transit to or from a state prison, county jail, city jail, halfway house, life skills center, community corrections facility or program, or supervised release program; or~~

~~(ii) escapes from or while in transit to or from another official detention by the use or threat of force, physical violence, weapon, or simulated weapon~~; or

(c) fined an amount not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both, if ~~he commits escape, including escape while in transit to or from official detention,~~ the person escapes under circumstances other than those described in subsections (3)(a) and (3)(b)."

**Section 2.** Section 46-18-243, MCA, is amended to read:

"**46-18-243. Definitions.** For purposes of 46-18-241 through 46-18-249, the following definitions apply:

(1) "Pecuniary loss" means:

(a) all special damages, but not general damages, substantiated by evidence in the record, that a person could recover against the offender in a civil action arising out of the facts or events constituting the offender's criminal activities, including without limitation the money equivalent of loss resulting from property taken, destroyed, broken, or otherwise harmed and out-of-pocket losses, such as medical expenses, loss of income, expenses reasonably incurred in obtaining ordinary and necessary services that the victim would have performed if not injured, expenses reasonably incurred in attending court proceedings related to the commission of the offense, and reasonable expenses related to funeral and burial or

crematory services; and

(b) reasonable out-of-pocket expenses incurred by the victim in filing charges or in cooperating in the investigation and prosecution of the offense.

(2)(a) "Victim" means:

(i) a person who suffers loss of property, bodily injury, or death as a result of:

(A) the commission of an offense;

(B) the good faith effort to prevent the commission of an offense; or

(C) the good faith effort to apprehend a person reasonably suspected of committing an offense;

(ii) the estate of a deceased or incapacitated victim or a member of the immediate family of a homicide victim;

(iii) a governmental entity that suffers loss of property as a result of the commission of an offense in this state or that incurs costs or losses during the commission or investigation of an escape, as defined in 45-7-306, or during the apprehension or attempted apprehension of the escapee; or

(iv) an insurer or surety with a right of subrogation to the extent it has reimbursed the victim of the offense for pecuniary loss.

(b) Victim does not include a person who is accountable for the crime or accountable for a crime arising from the same transaction."

NEW SECTION. **Section 3. Applicability.** [This act] applies to escapes occurring after [the effective date of this act].

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

-END-

HOUSE BILL NO. 43

INTRODUCED BY BANKHEAD

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT REDEFINING THE OFFENSE OF ESCAPE; ALLOWING A GOVERNMENTAL ENTITY TO RECOVER FROM AN ESCAPEE ITS COSTS REGARDING THE ESCAPE, THE INVESTIGATION OF THE ESCAPE, AND THE APPREHENSION OF THE ESCAPEE; AMENDING SECTIONS 45-7-306 AND 46-18-243, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 45-7-306, MCA, is amended to read:

"**45-7-306. Escape.** (1)(a) "Official detention" means ~~imprisonment which resulted from~~ placement of a person in the legal custody of a municipality, a county, or the state as a result of:

(i) a conviction for an offense~~, confinement for an offense, confinement of a person charged with~~ or of having been charged with an offense~~, detention~~;

(ii) the actual or constructive restraint or custody of a person by a peace officer pursuant to arrest, transport, or court order;

(iii) detention for extradition or deportation;

(iv) placement in a community corrections facility or program;

(v) supervision while under a supervised release program;

(vi) participation in a county jail work program under 7-32-2225 through 7-32-2227; or

(vii) any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society.

(b) ~~"Official detention"~~ Official detention does not include supervision of a person on probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(2) A person subject to official detention commits the offense of escape if ~~he~~ the person knowingly or purposely ~~removes himself from~~ eludes official detention or fails to return to official detention following

temporary leave granted for a specific purpose or limited time. A person also commits the offense of escape if ~~he~~ the person is participating in a county jail work program under 7-32-2225 through 7-32-2227 and ~~he~~ knowingly or purposely fails to appear for work at a time and place scheduled for participation in the program.

(3) A person convicted of the offense of escape shall be:

(a) imprisoned in the state prison for a term not to exceed 20 years if ~~he~~ the person escapes ~~from or while in transit to or from a state prison, county jail, city jail, community corrections facility or program, or supervised release program~~ by the use or threat of force, physical violence, a weapon, or a simulated weapon;

(b) imprisoned in the state prison for a term not to exceed 10 years if ~~he:~~

~~(i) has~~ the person escapes after having been charged with or convicted of a felony ~~and escapes from or while in transit to or from a state prison, county jail, city jail, halfway house, life skills center, community corrections facility or program, or supervised release program; or~~

~~(ii) escapes from or while in transit to or from another official detention by the use or threat of force, physical violence, weapon, or simulated weapon~~; or

(c) fined an amount not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both, if ~~he commits escape, including escape while in transit to or from official detention,~~ the person escapes under circumstances other than those described in subsections (3)(a) and (3)(b)."

**Section 2.** Section 46-18-243, MCA, is amended to read:

"**46-18-243. Definitions.** For purposes of 46-18-241 through 46-18-249, the following definitions apply:

(1) "Pecuniary loss" means:

(a) all special damages, but not general damages, substantiated by evidence in the record, that a person could recover against the offender in a civil action arising out of the facts or events constituting the offender's criminal activities, including without limitation the money equivalent of loss resulting from property taken, destroyed, broken, or otherwise harmed and out-of-pocket losses, such as medical expenses, loss of income, expenses reasonably incurred in obtaining ordinary and necessary services that the victim would have performed if not injured, expenses reasonably incurred in attending court proceedings related to the commission of the offense, and reasonable expenses related to funeral and burial or

crematory services; and

(b) reasonable out-of-pocket expenses incurred by the victim in filing charges or in cooperating in the investigation and prosecution of the offense.

(2)(a) "Victim" means:

(i) a person who suffers loss of property, bodily injury, or death as a result of:

(A) the commission of an offense;

(B) the good faith effort to prevent the commission of an offense; or

(C) the good faith effort to apprehend a person reasonably suspected of committing an offense;

(ii) the estate of a deceased or incapacitated victim or a member of the immediate family of a homicide victim;

(iii) a governmental entity that suffers loss of property as a result of the commission of an offense in this state or that incurs costs or losses during the commission or investigation of an escape, as defined in 45-7-306, or during the apprehension or attempted apprehension of the escapee; or

(iv) an insurer or surety with a right of subrogation to the extent it has reimbursed the victim of the offense for pecuniary loss.

(b) Victim does not include a person who is accountable for the crime or accountable for a crime arising from the same transaction."

NEW SECTION. **Section 3. Applicability.** [This act] applies to escapes occurring after [the effective date of this act].

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

-END-

Total 0

Absent or not voting: None.

Total 0

Excused: None.

Total 0

**HB 43** *(14th Legislative Day - House - 2nd Reading)* - Representative Bankhead moved HB 43 do pass. Motion carried as follows:

Ayes: Adams, Ahner, Anderson, Arnott, Bankhead, Barnett, Barnhart, Beaudry, Bergman, Bergsagel, Bitney, Boharski, Bohlinger, Bookout, Brainard, Carey, Clark, Cobb, Cocchiarella, Curtiss, DeBruycker, Denny, Devaney, Dowell, Ellingson, Ellis, Ewer, Feland, Galvin, Gillan, Grady, Grimes, Grinde, Hagener, H.S. Hanson, M. Hanson, Harper, Harrington, Hayne, Heavy Runner, Hibbard, Holland, Hurdle, J. Johnson, R. Johnson, Jore, Kasten, Keenan, Kitzenberg, Knox, Kottel, Krenzler, Lawson, Marshall, Masolo, McCann, McCulloch, McGee, Menahan, Mills, Mood, Ohs, Orr, Pavlovich, Pease, Peck, Prouse, Quilici, Raney, Ream, Rehbein, Rose, Ryan, Sands, Schmidt, Simon, Simpkins, Simpson, Sliter, Smith, Soft, Squires, Story, Stovall, Swanson, Tash, Taylor, Trexler, Tropila, Tuss, Vick, Wagner, Walters, Wells, Whitehead, Wiseman, Wyatt, Zook, Mr. Speaker.

Total 99

Noes: None.

Total 0

Excused: Molnar.

Total 1

Absent or not voting: None.

Total 0

**HB 43** *(15th Legislative Day - House - 3rd Reading)* passed as follows:

Ayes: Adams, Ahner, Anderson, Arnott, Bankhead, Barnett, Barnhart, Beaudry, Bergman, Bergsagel, Bitney, Boharski, Bohlinger, Bookout, Brainard, Carey, Clark, Cobb, Cocchiarella, Curtiss, DeBruycker, Denny, Devaney, Dowell, Ellingson, Ellis, Ewer, Feland, Galvin, Gillan, Grady, Grimes, Grinde, Hagener, H.S. Hanson, M. Hanson, Harper, Harrington, Hayne, Heavy Runner, Hibbard, Holland, Hurdle, J. Johnson, R. Johnson, Jore, Kasten, Keenan, Kitzenberg, Knox, Kottel, Krenzler, Lawson, Marshall, Masolo, McCann, McCulloch, McGee, Menahan, Mills, Mood, Ohs, Orr, Pavlovich, Pease, Peck, Prouse, Quilici, Raney, Ream, Rehbein, Rose, Ryan, Sands, Schmidt, Simon, Simpkins, Simpson, Sliter, Smith, Soft, Squires, Story, Stovall, Swanson, Tash, Taylor, Trexler, Tropila, Tuss, Vick, Wagner, Walters, Wells, Whitehead, Wiseman, Wyatt, Zook, Mr. Speaker.

Total 99

Noes: None.

Total 0

Excused: Molnar.

Total 1

Absent or not voting: None.

Total 0

# MINUTES

## MONTANA SENATE
## 55th LEGISLATURE - REGULAR SESSION

## COMMITTEE ON JUDICIARY

**Call to Order:** By **SENATOR BRUCE D. CRIPPEN**, on January 29, 1997, at 9:00 a.m., in the Senate Judiciary Chambers (Room 325) of the State Capitol, Helena, Montana.

### ROLL CALL

**Members Present:**
Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**
Hearing(s) & Date(s) Posted: HB 43, posted January 23 1997
SB 201, SB 202, posted January 22, 1997
Executive Action: SB 48, SB 99, SB 79, SB 176

### EXECUTIVE ACTION ON SB 48

Amendments: Prior executive session.

Motion: **SENATOR MIKE HALLIGAN MADE A MOTION THAT 48 DO PASS AS AMENDED.**

Discussion: **SENATOR HALLIGAN.** The assumptions have been dropped to zero.

Motion: **VICE CHAIRMAN LORENTS GROSFIELD MADE A MOTION TO ADOPT AMENDMENTS sb 017602.avl.**

Discussion: **VICE CHAIRMAN GROSFIELD.** This was **SENATOR HERTEL**'s and MACO's (Montana Association of Counties). My sense is the bill is a dead duck, but I'm trying to offer something satisfactory. The amendments puts back in the deleted language, and attempts to define substantial hardship as exempting the family home and a vehicle necessary for work.

I found that some courts use a form and some don't, so the amendment requires the Department of Justice to prescribe a form and to make it available, for the disclosure of income and assets. This should provide more guidance.

**SENATOR JABS.** If we reinsert this language are we really making a change, and has the sponsor seen it? **VICE CHAIRMAN GROSFIELD. SENATOR HERTEL** saw it and was okay with it. My sense was it would not get out of committee without these changes.

**CHAIRMAN CRIPPEN.** "Necessities" is present law.

**SENATOR BISHOP.** What if the home is worth $200,000 and is free and clear? **VICE CHAIRMAN GROSFIELD.** The language allows a judge to find specifically otherwise in determining hardship.

**SENATOR DOHERTY.** I believe it is a more specific approach, i.e., making judges have findings prior to assigning court-appointed counsel. Most court-appointed attorneys are busy enough, and if there is any way to have people find their own lawyer, that is good.

Vote: **VICE CHAIRMAN GROSFIELD'S MOTION TO ADOPT AMENDMENTS sb017602.avl CARRIED UNANIMOUSLY.**

Motion/Vote: **VICE CHAIRMAN GROSFIELD'S MOTION THAT SB 176 DO PASS AS AMENDED CARRIED UNANIMOUSLY WITH ALL MEMBERS VOTING AYE EXCEPT CHAIRMAN CRIPPEN WHO VOTED NO.**

*{Tape: 1; Side: A; Approx. Time Count: #55.5; Comments: 10:00 a.m..}*

## HEARING ON HB 43

Sponsor: **REPRESENTATIVE PAUL BANKHEAD, HD 72, Heron.**

Proponents: **Diana Leibinger-Koch, Department of Corrections**
**Christopher Miller, Powell County Attorney, Montana County Attorneys and for John Conner, Department of Justice**

Opponents: None

Opening Statement by Sponsor: **REPRESENTATIVE PAUL BANKHEAD, HD 72, Heron.** HB 72 deals with felony escape, including in transit to or from a facility. It changes the definition of official detention to "in the custody of." If they are in custody for a felony, then it would be felony escape.

*{Tape: 1; Side: A; Approx. Time Count: #59.9; Comments: None.}*

Proponents' Testimony: **Diana Leibinger-Koch, Department of Corrections.** This bill is designed to prevent this vicious cycle from recurring. We have been trying to plug this hole since the 1980s. It includes any inmate in the custody of the Department or any inmate on furlough **(EXHIBIT #4)**.

Anyone who is in custody for a misdemeanor offense and escapes is guilty only of misdemeanor escape and/or eluding custody.

**Christopher Miller, Powell County Attorney, Montana County Attorneys and John Conner, Department of Justice.** Most escape cases are mine. I believe the bill will save time in the courts, will be easier for inmates to understand, and will have a good effect in any county dealing with such **(EXHIBIT #5)**.

Questions From Committee Members and Responses: **SENATOR STEVE DOHERTY.** If an individual was in custody and escaped, would it be a misdemeanor offense? **Diana Leibinger.** Yes, but if they had a weapon, then it would be aggravated felony escape. If any have a weapon, however, then it would be aggravated felony escape for them.

**SENATOR DOHERTY.** How many have escaped in the last five years when they were outside or on work assignment? **Christopher Miller.** About 20.

**SENATOR DOHERTY.** What percentage of those were outside the prison walls versus inside? **Christopher Miller.** A total of 250??? escapes in the past five years includes centers around the state. We haven't had a successful escape from inside for about seven years.

Closing by Sponsor: **REPRESENTATIVE BANKHEAD.** Clearly the Supreme Court has issued the Legislature a challenge. I want to thank the Committee for its kind consideration of this bill.

## HEARING ON SB 201

Sponsor: **SENATOR WILLIAM GLASER, SD 8, Billings**

Proponents: **REPRESENTATIVE DEB KOTTEL, HD 45, Great Falls**

Opponents: **Betty Waddell, Montana Association of Churches**
**Sharon Hoff, Montana Catholic Conference**
**Edward F. Sheehy, Jr., American Civil Liberties Union (ACLU)**

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 1-29-97
BILL NO. HB 43

# DEPARTMENT OF CORRECTIONS

MARC RACICOT, GOVERNOR
1539 11TH AVENUE

STATE OF MONTANA

(406) 444-3930
FAX: (406) 444-4920
PO BOX 201301
HELENA, MONTANA 59620-1301

**BEFORE THE HOUSE JUDICIARY COMMITTEE; TESTIMONY CONCERNING**

**HOUSE BILL 43.**

**WHY STATUTORY CHANGES ARE NECESSARY:**

Two 1996 Montana Supreme Court cases vividly illustrate the need for changes to the escape statute. State v. Nelson, 53 St. Rep. 50, 910 P.2d 247 (1996), was the first case. See attached copy of the Pacific Reporter page number 253 of this case. Nelson and two other inmates were on "trustee" status at MSP and were performing work on the Deer Lodge golf course. A civilian golf course employee was supposed to be supervising them. The inmates eluded their supervisor, however, long enough to become intoxicated and leave in the golf course truck to drive to Helena for more alcohol. The State charged them with felony escape when law enforcement apprehended them. The Supreme Court decided they were only guilty of misdemeanor escape.

The Supreme Court speaks to the Montana Legislature on page 253 of the Court's opinion. The Court said, "We decline ...to insert into the statute that which has been omitted by the legislature." The current statute names each specific place from which an inmate can commit felony escape. The current statute does not list the Deer Lodge golf course or any other place outside a facility. With the changes to this statute which Representative Bankhead's bill proposes, the legislature does not need to try and imagine every possible scenario of escape and



"AN EQUAL OPPORTUNITY EMPLOYER"

include every conceivable place in the statute.

The Supreme Court also states on page 253 it will not assume the legislature considers an escape from a "civilian supervised work assignment outside the walls of the institution" as serious and dangerous as an escape from an institution. The Court reasons an escape from an institution poses a, "serious risk of harm and violence." The Court states later, "Certainly, if the legislature deems the sorts of escapes at issue here to pose a serious risk of harm, it can amend the statute to accommodate that concern."

The Department of Corrections urges the legislature to adopt the categories of risk inherent in escapes as this bill proposes. This bill categorizes the risk posed by the **individual escapee,** rather than the situation from which the escape takes place. This bill presumes someone who is charged with or convicted of a felony is necessarily more dangerous and poses more risk than someone who is merely charged with or convicted of a misdemeanor. This bill also assumes someone who committed a felony and whom a district court judge deemed dangerous enough to sentence to prison or the Department of Corrections poses a danger to society if allowed to roam the streets and highways unsupervised before the inmate's incarceration, parole, and probation is finished.

After the Supreme Court released the Nelson opinion on January 30, 1996, community corrections officials were very concerned about inmates whom the Department was supervising in the community at pre-release centers and on intensive supervision. The Department of Corrections sends inmates who escape immediately back to prison when law enforcement captures them. The escapee then spends time in maximum security and forfeits all his/her accumulated good time. That alone, though, is not significant enough to deter inmates from

trying to escape. The courts usually sentence defendants found guilty of felony escape to another two years of incarceration which the inmate must serve consecutive to his/her original sentence. Most inmates also fear another felony conviction, and even more time added for a felony escape.

The next Supreme Court opinion about escape also depicted why the statute needs to change. The Supreme Court decided State v. Roberts, 53 St. Rep. 181, 912 P.2d 812 (1996), on March 12, 1996. Roberts was an inmate whom the parole board was going to parole. Before he was paroled, however, the prison granted him a 10 day furlough to look for housing and employment. Roberts did not return to the prison at the end of the 10 days. The Court said Roberts was not "subject to official detention" at all. The Court ordered the District Court to dismiss the escape charge against Roberts; he was not guilty of any escape, misdemeanor or felony.

If the statute stays the same, prison officials will have to study the statute before they dare take an inmate anywhere outside the prison walls to determine if the place where they are taking the inmate is included in the escape statute. Corrections officials also will have to change the furlough policy.

**MAJOR PROPOSED CHANGES IN THE STATUTE**

CURRENT STATUTORY LANGUAGE: 45-7-306. Escape. (1) "Official detention" means **imprisonment** which resulted from a conviction for an offense, **confinement** for an offense, **confinement** of a person charged with an offense, detention by a peace officer pursuant to arrest,

IS CHANGED TO:

"Official detention" means **placement of a person in the legal custody of** a municipality, a county, or the state as a result of:

(I) a conviction for an offense, or of having been charged with an offense;

(ii) the actual or constructive restraint or custody of a person by a peace officer pursuant to arrest, transport, or court order;

*This Section changes the definition of "official detention" from a person who has been confined in various facilities to a definition which includes every person who is in the legal custody of a city, county, or state.*

THIS PORTION REMAINS THE SAME:

detention for extradition or deportation, placement in a community corrections facility or program, supervision while under a supervised release program, participation in a county jail work program under 7-32-2225 through 7-32-2227, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society.

OR ALMOST THE SAME

"Official detention" does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(2) A person subject to official detention commits the offense of escape if he knowingly or purposely removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited time. A person also commits the offense of escape if he is participating in a county jail work program under 7-32-2225 through 7-32-2227 and he knowingly or purposely fails to appear for work at a time and place scheduled for participation in the program.

**MORE MAJOR CHANGES:**

CURRENT STATUTORY LANGUAGE:

(3) A person convicted of the offense of escape shall be:

(a) imprisoned in the state prison for a term not to exceed 20 years if he escapes **from or while in transit to or from a state prison, county jail, city jail, community corrections**

**facility or program, or supervised release program** by the use or threat of force, physical violence, weapon, or simulated weapon;

IS CHANGED TO:

(a) imprisoned in the state prison for a term not to exceed 20 years if the person escapes by the use or threat of force, physical violence, a weapon, or a simulated weapon.

*The initial changes eliminated the necessity of naming every conceivable place from which an inmate could escape and put the emphasis on the means of escape.*

CURRENT STATUTORY LANGUAGE:

(b) imprisoned in the state prison for a term not to exceed 10 years if he:

(i) has been charged with or convicted of a felony and escapes from or while in transit to or from a state prison, county jail, city jail, halfway house, life skills center, community corrections facility or program, or supervised release program; or

(ii) escapes from or while in transit to or from another official detention by the use or threat of force, physical violence, weapon, or simulated weapon; or

IS CHANGED TO:

(b) imprisoned in the state prison for a term not to exceed 10 years if the person escapes after having been charged with or convicted of a felony; or

*Again, here the statute need not name all places and situations from which an inmate could escape.*

SUBSECTION (C) REMAINS MOSTLY THE SAME.

(c) fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both, if he commits escape, including escape while in transit to or from official detention, under circumstances other than (a) and (b) of this subsection.

With the new Section of this bill the Department seeks to hold offenders accountable by

trying to recoup the cost of an escape investigation and apprehension of an escapee. This makes sense from an accountability point of view and from a fiscal point of view.

The Department of Corrections requests this Judiciary Committee pass House Bill 43 so corrections officials have an effective tool to help protect society and hold offenders accountable.

exceed 6 months, or both, if he commits escape, including escape while in transit to or from official detention, under circumstances other than (a) and (b) of this subsection.

Here, the evidence precludes application of either § 45–7–306(3)(a) or (b)(ii), MCA (1993), since the use or threat of force, physical violence, or weapons, real or simulated, was not involved in the three inmates' escape. Since the District Court sentenced each defendant for felony escape, necessarily the only other subsection of § 45–7–306(3), MCA (1993), available was (b)(i). Sentencing under that provision, however, requires that the person convicted escape "from or while in transit to or from" the various institutions and facilities listed.

The facts established at trial clearly indicate that Lafley's, Worden's and Edwards' escape occurred while they were on daily work assignment at the Deer Lodge golf course. At the time of the crime, they were not at any one of the institutions or facilities listed in the statute, nor were they "in transit" to or from one of those institutions or facilities.

Notwithstanding the clear and unambiguous language of the statute, the State nevertheless argues that we should not apply the statute literally, but should liberally construe the phrase "while in transit to or from" to describe "both the actual conveyance of inmates to and from the state prison at the beginning and end of each work day and the degree of custody to which they are subject while at work." To do otherwise, according to the State, will defy common sense and necessitate the legislature once again amending the statute as it did in response to our prior narrow and literal interpretations of the statutory language at issue in *State v. Whiteshield* (1980), 185 Mont. 208, 605 P.2d 189 (rejecting the argument that escape from a furlough was the same as escape from the state prison); *State v. Savaria* (1990), 245 Mont. 224, 800 P.2d 696 (rejecting the argument that escape from the "county jail" encompassed defendant's escape from the courthouse following his appearance at a sentencing proceeding). See also, *State v. Kyle* (1980), 189 Mont. 38, 614 P.2d 1059, which prompted the legislature to amend the statute to codify our decision and include supervised release programs within the felony escape statute. We decline the State's invitation to insert into the statute that which has been omitted by the legislature. Section 1–2–101, MCA.

In the first place, the language which the legislature chose in defining felony escape under § 45–7–306(3)(b)(i), MCA (1993), is clear and unambiguous. We are simply not going to torture the phrase "in transit to or from" as the State suggests we should. Lafley, Worden and Edwards were not "in transit" to or from any state facility or institution when they escaped. They were at the Deer Lodge golf course.

Secondly, we do not assume, as the State apparently does, that the legislature would, in any event, consider an unrestrained inmate's escape from a civilian-supervised work assignment outside the walls of the institution to pose the same sort of serious risk of harm and violence that is inherent in a prisoner's escape from confinement and supervision by guards whose duty is to prevent escapes. *See Whiteshield*, 605 P.2d at 190–91; *Kyle*, 614 P.2d at 1060. Certainly, if the legislature deems the sorts of escapes at issue here to pose a serious risk of harm, it can amend the statute to accommodate that concern.

Accordingly, we hold that the District Court improperly sentenced Lafley, Worden and Edwards pursuant to the felony escape provisions of § 45–7–306(3)(b)(i), MCA (1993), under the facts of this case. We remand for resentencing under the misdemeanor escape provisions of § 45–7–306(3)(c), MCA (1993).

Affirmed in part; reversed in part; and remanded for further proceedings consistent with this opinion.

TURNAGE, C.J., and TRIEWEILER, GRAY, HUNT, LEAPHART and ERDMANN, JJ., concur.

STATE OF MONTANA
# DEPARTMENT OF JUSTICE
COUNTY PROSECUTOR SERVICES BUREAU

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. Ex 5
DATE 1-29-97
BILL NO. HB43

**Joseph P. Mazurek**
**Attorney General**

**Scott Hart Bldg., 1st Floor**
**303 N Roberts**
**PO Box 201439**
**Helena, MT 59620-1439**

## HOUSE BILL 43

In 1991, the escape statute, Mont. Code Ann. § 45-7-306, was amended by adding the language "while in transit to or from" any of the facilities listed. This amendment was enacted to correct a problem in the statue in response to a Montana Supreme Court decision holding that a person who escaped while being transported to court from a county jail was not guilty of felony escape. However, the 1991 language did not entirely cure the problem, apparently, because in the 1996 case of State v. Nelson, Worden and Lafley, the Montana Supreme Court held that a state prison inmate who escapes while on work assignment outside the prison walls is not guilty of a felony.

The 1997 proposed amendments are intended to clarify finally that any person who has been charged with or convicted of a felony who is under lawful custody of the state, county, or city (other than a probationer or parolee) is guilty of felony escape if he escapes from or fails to return to that custody following temporary leave granted for a specific purpose. The bill eliminates the laundry list of facilities from which an escape constitutes a felony and focuses instead on the fact of custody. This will also remedy another Montana Supreme Court opinion, State v. Roberts, in which the Court held that an escape while on a 10-day leave from MSP to find employment for future parole status did not constitute a felony.

Respectfully Submitted,

John Connor
Assistant Attorney General
Department of Justice
303 North Roberts
Helena, MT 59620
(406) 444-5791

MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE Jan 29, 1997

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| SUE BARTLETT | ✓ | | |
| AL BISHOP | ✓ | | |
| STEVE DOHERTY | ✓ | | |
| SHARON ESTRADA | ✓ | | |
| MIKE HALLIGAN | ✓ | | |
| RIC HOLDEN | ✓ | | |
| REINY JABS | ✓ | | |
| WALT MC NUTT | ✓ | | |
| LORENTS GROSFIELD, VICE CHAIRMAN | ✓ | | |
| BRUCE CRIPPEN, CHAIRMAN | ✓ | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

SEN:1995
wp.rollcall.man
CS-09

DATE Jan 29, 1997

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 201, 202, HB 43

< ■ > PLEASE PRINT < ■ >

| Name | Representing | Bill No. | Check One: Support | Check One: Oppose |
|---|---|---|---|---|
| Betty Waddell | Montana Association of Churches | 201 | | X |
| Betty Waddell | Montana Association of Churches | 202 | | X |
| Ed Sheehy, Jr. | ACLU | 201, 202 | | X |
| DIANA LEIBINGER-KOCH | Dept. of Corrections | 43 | X | |
| Chris Miller | Powell Co., MCAA | 43 | X | |
| Ken Moore | First Christian Church-Helena | 201, 202 | | X |
| Sharon Hoff | MT Catholic Conf | 201, 202 | | X |
| Scott Crichton | ACLU MT | 201/202 | | X |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

# MINUTES

## MONTANA SENATE
## 55th LEGISLATURE - REGULAR SESSION

## COMMITTEE ON JUDICIARY

**Call to Order:** By **CHAIRMAN BRUCE D. CRIPPEN**, on January 30, 1997, at 10:00 a.m., in Room 108.

### ROLL CALL

**Members Present:**

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

**Members Excused:** **SEN. LORENTS GROSFIELD**
**SEN. SHARON ESTRADA**

**Members Absent:** None

**Staff Present:** Valencia Lane, Legislative Services Division
Judy Keintz, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 205, 01/22/97
SB 196, 01/22/97
SB 212, 01/23/97

Executive Action: SB 173, SB 172, HB 43, SB 196, SB 205, SB 178, SB 168, SB 201, SB 202

### HEARING ON SB 205

Sponsor: **SEN. WALTER MCNUTT, SD 50, Sidney**

Proponents: **Riley Johnson, Montana Broadcasters Association**

Opponents: **None**

**SEN. MCNUTT** stated they did not because if the person traded off a vehicle, they could put a lien on the next one. If brothers traded vehicles, they could put a lien on that vehicle.

*{Tape: 2; Side: 1; Approx. Time Count: 11:28; Comments: .}*

Vote: The motion carried unanimously.

## EXECUTIVE ACTION ON SB 172

**SEN. HALLIGAN** stated the interim committee on juvenile justice made major changes five years ago and one of the keys to that was the regional detention centers. Missoula should have built a detention center and now they have to transport youth to Kalispell. The Board of Crime Control will not be able to provide incentive to counties to transport youth. Instead, they are giving them an incentive to build.

Motion: **SEN. HOLDEN MOVED SB 172 BE TABLED.**

Discussion:

**CHAIRMAN CRIPPEN** was concerned about the first come first serve basis.

**SEN. HALLIGAN** felt that the Select Committee on Corrections would be looking at these issues and could address this issue.

Vote: The motion carried. **SEN. HALLIGAN** voted no.

## EXECUTIVE ACTION ON HB 43

Motion: **SEN. DOHERTY MOVED HB 43 BE CONCURRED IN.**

Discussion:

**SEN. DOHERTY** explained this bill would redefine escape to change it to the status, as opposed to the laundry list. He thinks this is a good idea.

**CHAIRMAN CRIPPEN** stated there always had to be proof of an attempt to escape. The inmate had to elude and stay eluded. If a person went into Deer Lodge and became drunk, passed out and then came back three days later, that was not escape. There was no intent to permanently leave confinement. In this bill, that would be escape.

**SEN. MCNUTT** asked when escape happened in the situation of a prisoner who was out in front of the prison left for Deer Lodge?

**CHAIRMAN CRIPPEN** said that would be determined by the purpose of leaving.

**SEN. DOHERTY** stated that if his status included as a part of his being outside he was allowed to go into Deer Lodge for certain reasons, that would not be escape. Under this bill, if they said he could go into Deer Lodge to put gas into the truck to go to work and in addition to buying gas he stopped at the bar for a day, that would be an escape. He went outside his status. That was the situation when the individual was given a ten day furlough to find a job. He did not return at the end of ten days and that made him an escapee at that point.

**CHAIRMAN CRIPPEN** commented if the person went into town, picked up a six pack of beer and a hamburger, and parked somewhere and fell asleep with no intent to escape, he would be nailed under this bill.

**SEN. DOHERTY** said they would have to rely on the Powell County Attorney.

Vote: The vote carried with **SEN. BISHOP** and **CHAIRMAN CRIPPEN** voting no.

## EXECUTIVE ACTION ON SB 178

Motion: **SEN. DOHERTY MOVED SB 178 DO PASS.**

Discussion:

**SEN. DOHERTY** explained this bill revised the offense of criminal syndicalism to criminal incitement. This brings the elements more in line with the constitutional prohibitions which are there. Prosecutors were able to convict on criminal syndicalism but under appeal they would have been in trouble. This would make existing law more in line with constitutional directives.

**SEN. BISHOP** felt this bill would call this type of conduct what it really is.

**SEN. DOHERTY** commented that the key factor was imminence. The factual element will change in every situation.

Vote: Motion carried unanimously.

## EXECUTIVE ACTION ON SB 168

Motion: **SEN. DOHERTY MOVED SB 168 DO PASS.**

Discussion: **SEN. DOHERTY** commented that this bill did have opposition during the hearing. He and **Ms. Lane** discussed the comma placement questioned during the hearing. There has to be an unlawful, violent act. The current editing is that the comma is in the right place. Their intention is not to separate it and make it two different things. The grey area of protected speech is a difficult matter. He usually believes in protecting speech,

**SENATE STANDING COMMITTEE REPORT**


January 30, 1997

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 43 (third reading copy -- blue), respectfully report that HB 43 be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

TS Amd. Coord.
SA Sec. of Senate

_____
Senator Carrying Bill

221242SC.STS

MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 1/30/97

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| SUE BARTLETT | ✓ | | |
| AL BISHOP | ✓ | | |
| STEVE DOHERTY | ✓ | | |
| SHARON ESTRADA | ✓ | | ✓ |
| MIKE HALLIGAN | ✓ | | |
| RIC HOLDEN | ✓ | | |
| REINY JABS | ✓ | | |
| WALT MC NUTT | ✓ | | |
| LORENTS GROSFIELD, VICE CHAIRMAN | | | ✓ |
| BRUCE CRIPPEN, CHAIRMAN | ✓ | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

SEN:1995
wp.rollcall.man
CS-09

APPROVED BY COM
ON JUDICIARY

HOUSE BILL NO. 43

INTRODUCED BY BANKHEAD

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT REDEFINING THE OFFENSE OF ESCAPE; ALLOWING A GOVERNMENTAL ENTITY TO RECOVER FROM AN ESCAPEE ITS COSTS REGARDING THE ESCAPE, THE INVESTIGATION OF THE ESCAPE, AND THE APPREHENSION OF THE ESCAPEE; AMENDING SECTIONS 45-7-306 AND 46-18-243, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO THIRD READING COPY (BLUE) FOR COMPLETE TEXT.**

HOUSE BILL NO. 43

INTRODUCED BY BANKHEAD, THOMAS

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT REDEFINING THE OFFENSE OF ESCAPE; ALLOWING A GOVERNMENTAL ENTITY TO RECOVER FROM AN ESCAPEE ITS COSTS REGARDING THE ESCAPE, THE INVESTIGATION OF THE ESCAPE, AND THE APPREHENSION OF THE ESCAPEE; AMENDING SECTIONS 45-7-306 AND 46-18-243, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 45-7-306, MCA, is amended to read:

"**45-7-306. Escape.** (1)(a) "Official detention" means ~~imprisonment which resulted from~~ placement of a person in the legal custody of a municipality, a county, or the state as a result of:

(i) a conviction for an offense~~, confinement for an offense, confinement of a person charged with~~ or of having been charged with an offense~~, detention~~;

(ii) the actual or constructive restraint or custody of a person by a peace officer pursuant to arrest, transport, or court order;

(iii) detention for extradition or deportation~~;~~;

(iv) placement in a community corrections facility or program~~;~~;

(v) supervision while under a supervised release program~~;~~;

(vi) participation in a county jail work program under 7-32-2225 through 7-32-2227~~;~~; or

(vii) any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society.

(b) ~~"Official detention"~~ Official detention does not include supervision of a person on probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(2) A person subject to official detention commits the offense of escape if ~~he~~ the person knowingly or purposely ~~removes himself from~~ eludes official detention or fails to return to official detention following

temporary leave granted for a specific purpose or limited time. A person also commits the offense of escape if ~~he~~ the person is participating in a county jail work program under 7-32-2225 through 7-32-2227 and ~~he~~ knowingly or purposely fails to appear for work at a time and place scheduled for participation in the program.

(3) A person convicted of the offense of escape shall be:

(a) imprisoned in the state prison for a term not to exceed 20 years if ~~he~~ the person escapes ~~from or while in transit to or from a state prison, county jail, city jail, community corrections facility or program, or supervised release program~~ by the use or threat of force, physical violence, a weapon, or a simulated weapon;

(b) imprisoned in the state prison for a term not to exceed 10 years if ~~he:~~

~~(i) has~~ the person escapes after having been charged with or convicted of a felony ~~and escapes from or while in transit to or from a state prison, county jail, city jail, halfway house, life skills center, community corrections facility or program, or supervised release program; or~~

~~(ii) escapes from or while in transit to or from another official detention by the use or threat of force, physical violence, weapon, or simulated weapon~~; or

(c) fined an amount not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both, if ~~he commits escape, including escape while in transit to or from official detention,~~ the person escapes under circumstances other than those described in subsections (3)(a) and (3)(b)."

**Section 2.** Section 46-18-243, MCA, is amended to read:

"**46-18-243. Definitions.** For purposes of 46-18-241 through 46-18-249, the following definitions apply:

(1) "Pecuniary loss" means:

(a) all special damages, but not general damages, substantiated by evidence in the record, that a person could recover against the offender in a civil action arising out of the facts or events constituting the offender's criminal activities, including without limitation the money equivalent of loss resulting from property taken, destroyed, broken, or otherwise harmed and out-of-pocket losses, such as medical expenses, loss of income, expenses reasonably incurred in obtaining ordinary and necessary services that the victim would have performed if not injured, expenses reasonably incurred in attending court proceedings related to the commission of the offense, and reasonable expenses related to funeral and burial or

crematory services; and

(b) reasonable out-of-pocket expenses incurred by the victim in filing charges or in cooperating in the investigation and prosecution of the offense.

(2)(a) "Victim" means:

(i) a person who suffers loss of property, bodily injury, or death as a result of:

(A) the commission of an offense;

(B) the good faith effort to prevent the commission of an offense; or

(C) the good faith effort to apprehend a person reasonably suspected of committing an offense;

(ii) the estate of a deceased or incapacitated victim or a member of the immediate family of a homicide victim;

(iii) a governmental entity that suffers loss of property as a result of the commission of an offense in this state or that incurs costs or losses during the commission or investigation of an escape, as defined in 45-7-306, or during the apprehension or attempted apprehension of the escapee; or

(iv) an insurer or surety with a right of subrogation to the extent it has reimbursed the victim of the offense for pecuniary loss.

(b) Victim does not include a person who is accountable for the crime or accountable for a crime arising from the same transaction."

NEW SECTION. **Section 3. Applicability.** [This act] applies to escapes occurring after [the effective date of this act].

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

-END-

**HB 43** *(32nd Legislative Day - Senate - 2nd Reading)* - Senator Thomas moved HB 43 be concurred in. Motion carried with Senator Toews voting nay.

**HB 43** *(33rd Legislative Day - Senate - 3rd Reading)* concurred in as follows:

Yeas: Baer, Bartlett, Beck, Benedict, Bishop, Brooke, Burnett, Christiaens, Cole, Crippen, Crismore, DePratu, Devlin, Doherty, Eck, Emerson, Estrada, Foster, Franklin, Gage, Glaser, Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jabs, Jenkins, Jergeson, Keating, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Nelson, Shea, Sprague, Stang, Swysgood, Taylor, Thomas, Toews, Van Valkenburg, Waterman, Wilson, Mr. President.

Total 50

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: None.

Total 0

**HB 44** *(29th Legislative Day - House - 2nd Reading)* - Representative Devaney moved HB 44 do pass. Motion carried as follows:

Ayes: Adams, Ahner, Anderson, Arnott, Bankhead, Barnett, Barnhart, Beaudry, Bergman, Bergsagel, Bitney, Boharski, Bohlinger, Bookout, Brainard, Carey, Clark, Cobb, Curtiss, DeBruycker, Denny, Devaney, Ellingson, Ellis, Ewer, Feland, Galvin, Gillan, Grimes, Grinde, H.S. Hanson, M. Hanson, Harper, Harrington, Hayne, Hibbard, Holland, J. Johnson, R. Johnson, Jore, Kasten, Keenan, Kitzenberg, Knox, Kottel, Krenzler, Lawson, Marshall, Masolo, McCann, McCulloch, McGee, Menahan, Mills, Mood, Ohs, Orr, Pavlovich, Pease, Prouse, Raney, Ream, Rehbein, Rose, Sands, Schmidt, Simon, Simpson, Sliter, Smith, Soft, Squires, Story, Stovall, Swanson, Tash, Taylor, Trexler, Vick, Wagner, Walters, Wells, Wiseman, Wyatt, Zook, Mr. Speaker.

Total 86

Noes: Cocchiarella, Dowell, Hagener, Heavy Runner, Hurdle, Peck, Quilici, Simpkins, Tropila, Tuss, Whitehead.

Total 11

Voted Absentee: Grimes, Aye.

Excused: None.

Total 0

Absent or not voting: Grady, Molnar, Ryan.

Total 3

**HB 44** *(30th Legislative Day - House - 3rd Reading)* passed as follows:

Ayes: Adams, Ahner, Anderson, Arnott, Bankhead, Barnett, Barnhart, Beaudry, Bergman, Bergsagel, Bitney, Boharski, Bohlinger, Bookout, Brainard, Carey, Clark, Cobb, Cocchiarella, Curtiss, DeBruycker, Denny, Devaney, Dowell, Ellingson, Ellis, Ewer, Feland, Galvin, Gillan, Grimes, Grinde, Hagener, H.S. Hanson, M. Hanson, Harper, Harrington, Hayne, Hibbard, Holland, J. Johnson, R. Johnson, Kasten, Keenan, Kitzenberg, Knox,

# CHAPTER NO. 25

[HB 85]

AN ACT SPECIFYING THAT THE COMMISSIONER OF POLITICAL PRACTICES SHALL NOTIFY THE SECRETARY OF STATE OR THE ELECTION ADMINISTRATOR OF NONCOMPLIANCE WITH CAMPAIGN PRACTICE LAWS BEFORE CERTAIN DEADLINES RELATED TO BALLOT CERTIFICATION; AND AMENDING SECTION 13-37-126, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 13-37-126, MCA, is amended to read:

**"13-37-126. Names not to be printed on ballot.** (1) The name of a candidate may not be printed on the official ballot for an election if the candidate or a political treasurer for a candidate fails to file any statement or report as required by this chapter.

(2) A vacancy on an official ballot under this section may be filled in the manner provided by law, but not by the name of the same candidate.

(3) In carrying out the mandate of this section, the commissioner ~~must~~ *shall*, by a written statement, notify the secretary of state or the election administrator that a candidate or a candidate's treasurer has not complied with the provisions of this chapter, as described in subsection (1), and that a candidate's name should not be printed on the official ballot. *The commissioner shall provide this notification by the ballot certification deadline provided in 13-10-208 for primary elections and by no later than 7 days before the ballot certification deadline provided in 13-12-201 for general elections.*"

Approved February 20, 1997

# CHAPTER NO. 26

[HB 43]

AN ACT REDEFINING THE OFFENSE OF ESCAPE; ALLOWING A GOVERNMENTAL ENTITY TO RECOVER FROM AN ESCAPEE ITS COSTS REGARDING THE ESCAPE, THE INVESTIGATION OF THE ESCAPE, AND THE APPREHENSION OF THE ESCAPEE; AMENDING SECTIONS 45-7-306 AND 46-18-243, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 45-7-306, MCA, is amended to read:

**"45-7-306. Escape.** (1) *(a)* "Official detention" means ~~imprisonment which resulted from~~ *placement of a person in the legal custody of a municipality, a county, or the state as a result of:*

*(i)* a conviction for an offense~~, confinement for an offense, confinement of a person charged with~~ *or of having been charged with* an offense~~, detention,~~

*(ii) the actual or constructive restraint or custody of a person* by a peace officer pursuant to arrest, *transport, or court order;*

*(iii)* detention for extradition or deportation~~,~~;

*(iv)* placement in a community corrections facility or program~~,~~;

*(v)* supervision while under a supervised release program~~,~~;

*(vi)* participation in a county jail work program under 7-32-2225 through 7-32-2227~~,~~; or

*(vii)* any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society.

*(b)* ~~"Official detention"~~ *Official detention* does not include supervision of *a person on* probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(2) A person subject to official detention commits the offense of escape if ~~he~~ *the person* knowingly or purposely ~~removes himself from~~ *eludes* official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited time. A person also commits the offense of escape if ~~he~~ *the person* is participating in a county jail work program under 7-32-2225 through 7-32-2227 and ~~he~~ knowingly or purposely fails to appear for work at a time and place scheduled for participation in the program.

(3) A person convicted of the offense of escape shall be:

(a) imprisoned in the state prison for a term not to exceed 20 years if ~~he~~ *the person* escapes ~~from or while in transit to or from a state prison, county jail, city jail, community corrections facility or program, or supervised release program~~ by the use or threat of force, physical violence, *a* weapon, or *a* simulated weapon;

(b) imprisoned in the state prison for a term not to exceed 10 years if ~~he:~~

~~(i) has~~ *the person escapes after having* been charged with or convicted of a felony ~~and escapes from or while in transit to or from a state prison, county jail, city jail, halfway house, life skills center, community corrections facility or program, or supervised release program; or~~

~~(ii) escapes from or while in transit to or from another official detention by the use or threat of force, physical violence, weapon, or simulated weapon~~; or

(c) fined *an amount* not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both, if ~~he commits escape, including escape while in transit to or from official detention,~~ *the person escapes* under circumstances other than *those described in* subsections (3)(a) and (3)(b)."

**Section 2.** Section 46-18-243, MCA, is amended to read:

**"46-18-243. Definitions.** For purposes of 46-18-241 through 46-18-249, the following definitions apply:

(1) "Pecuniary loss" means:

(a) all special damages, but not general damages, substantiated by evidence in the record, that a person could recover against the offender in a civil action arising out of the facts or events constituting the offender's criminal activities, including without limitation the money equivalent of loss resulting from property taken, destroyed, broken, or otherwise harmed and out-of-pocket losses, such as medical expenses, loss of income, expenses reasonably incurred in obtaining ordinary and necessary services that the victim would have performed if not injured, expenses reasonably incurred in attending court proceedings related to the commission of the offense, and reasonable expenses related to funeral and burial or crematory services; and

(b) reasonable out-of-pocket expenses incurred by the victim in filing charges or in cooperating in the investigation and prosecution of the offense.

(2) (a) "Victim" means:

(i) a person who suffers loss of property, bodily injury, or death as a result of:

(A) the commission of an offense;

(B) the good faith effort to prevent the commission of an offense; or

(C) the good faith effort to apprehend a person reasonably suspected of committing an offense;

(ii) the estate of a deceased or incapacitated victim or a member of the immediate family of a homicide victim;

(iii) a governmental entity that suffers loss of property as a result of the commission of an offense in this state *or that incurs costs or losses during the commission or investigation of an escape, as defined in 45-7-306, or during the apprehension or attempted apprehension of the escapee*; or

(iv) an insurer or surety with a right of subrogation to the extent it has reimbursed the victim of the offense for pecuniary loss.

(b) Victim does not include a person who is accountable for the crime or accountable for a crime arising from the same transaction."

**Section 3. Applicability.** [This act] applies to escapes occurring after [the effective date of this act].

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved February 21, 1997

# CHAPTER NO. 27

[HB 73]

AN ACT TRANSFERRING RULEMAKING AUTHORITY FROM THE STATE BOARD OF LAND COMMISSIONERS TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ENSURE THAT RULEMAKING AUTHORITY FOR FIRE PROTECTION, PROTECTION OF FOREST